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CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSS BAIR, dba Bair Brothers; LYLE K. BAIR, dba Bair Brothers; BAIR BROTHERS; BERGESON FARMS, INC., a Washington corporation; CEEKAYDEE FARMS GENERAL PARTNERSHIP, a Washington partnership; KEITH B. CHILD; CORBETT DRAW FARMS GENERAL PARTNERSHIP, a Washington partnership; D & D GILBERT FARMS, INC., a Washington corporation; TOM DOWNS; LAMAR GILBERT; DAVID HAMMOND, JERRY HODGES; CHRIS HYER; JOHN HYER; MARK IVERSON; STEVE JORGENSEN; SHEFFELS & SON INC., a Washington corporation; LEON R. LEON R. BAKER FARMS LLC, a Washington limited liability company; JERRY C. MILBRANDT; R & J FAMILY FARMS, INC., a Washington corporation; ALLAN ROBEL; RONALD ROYLANCE FARMS, INC., a Washington corporation; ROYLANCE COULEE PARTNERSHIP, a Washington partnership; RANDY ROYLANCE; SBS FARMS LLC, a Washington limited liability company; TRAVIS STEFFLER; PAUL STOKER; FINN C. CLAUSEN, dba Stokrose Farm and Feedlot; STOKROSE FARM AND

No. 02-35462

D.C. No. CV-01-00310-AAM

MEMORANDUM*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

FEEDLOT; TIM TAYLOR; TRACY LYBBERT FARMS, INC., a Washington corporation; DUANE MARCUSEN; LUIS A. MARTINEZ; STATE OF WASHINGTON, DEPARTMENT OF NATURAL RESOURCES; LEGACY FARMS, INC., a Washington corporation; SHANE CHRISTENSEN; J. LYN WOOD; PIERCY FARMS, INC., a Washington corporation; SWEETWATER RANCH LLC, a Washington limited liability company; ROGER ROYLANCE FARMS, INC., a Washington corporation; KEVIN JENKS; LARRY SCHAAPMAN; DAVID EDLER; HISASHI INOUYE; CIRCLE D, INC., a Washington corporation; DIAMOND M, INC., a Washington corporation; D. GLEN BAIR,

Plaintiffs - Appellants,

v.

PACIFIC NORTHWEST SUGAR COMPANY LLC, a Washington limited liability company; COMMODITY CREDIT CORPORATION, a federally chartered government corporation; U.S. DEPARTMENT OF AGRICULTURE,

Defendants - Appellees.

Appeal from the United States District Court
for the Eastern District of Washington
Alan A. McDonald, District Judge, Presiding

Argued and Submitted June 6, 2003
Seattle, Washington

Before: B. FLETCHER, BRUNETTI, and McKEOWN, Circuit Judges.

Sugar beet growers in Washington state ("Growers") sued the Pacific Northwest Sugar Company ("PNSC"), a sugar processor, for money owed on sugar beets they sold to the PNSC. The Growers also sued the Commodity Credit Corporation ("CCC"), an agency of the United States Department of Agriculture, seeking a declaration that their liens are superior to those of the CCC. The district court granted the CCC's motion for summary judgment. The Growers appeal, arguing that the CCC's liens are not superior to their liens and that the CCC failed to obtain adequate assurances from the PNSC that the PNSC would pay certain amounts to the Growers. For the reasons stated below, we affirm the district court's judgment. The parties are familiar with the facts of this case and we refer to them only as necessary in this disposition.

1. Superiority of Liens

As a preliminary matter, we note that this case is governed by federal law, not state law, because the lien priority of a federal lending program is at issue. See United States v. Kimbell Foods, Inc., 440 U.S. 715, 726 (1979).

This case requires us to interpret 7 U.S.C. § 7284(d) and determine whether it gives the CCC a super-priority lien on refined sugar and the proceeds from that sugar. In performing statutory interpretation, we begin with the language of the statute. Duncan v. Walker, 533 U.S. 167, 172 (2001). We must give effect to every word in the statute, if possible, so as not to treat words as surplusage. Id. at 174. We construe a statute to avoid an absurd result. In re County of Orange, 262 F.3d 1014, 1018 (9th Cir. 2001). We strive to avoid interpreting a statute in such a way that renders the statute unconstitutional. Chapman v. United States, 500 U.S. 453, 464 (1991).

Using the text of the statute as our starting point, we hold that its plain meaning is dispositive in favor of the CCC. The text of § 7284(d) states:

> A security interest obtained by the Commodity Credit Corporation as a result of the execution of a security agreement by the processor of sugarcane or sugar beets shall be superior to all statutory and common law liens on raw cane sugar and refined beet sugar in favor of the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on the crops of sugarcane and sugar beets from which the sugar was derived.

7 U.S.C. § 7284(d). The Growers advance many arguments to the contrary. We address each in turn.

The Growers first argue that the text of the statute supports their conclusion. They contend that because the word "prior" is used with only crop liens, and not with refined sugar liens, a super-priority lien is created only as to crop liens. They argue that CCC liens trump producer liens in the refined sugar only if the producer liens arise after the CCC liens. The Growers argue that to interpret the statute differently is to render the word "prior" surplusage.

Despite the Growers' argument, the word "prior" is not rendered surplusage. The word "prior" is descriptive of liens on crops, which Congress may have presumed would typically arise prior to liens in refined sugar. Although the word "prior" does not have significant legal effect, it is not rendered completely useless. Indeed, the fact that the word "prior" does not add much to the statute is consistent with other language in the statute that, while descriptive, is not entirely necessary. For example, the statute refers to "all statutory and common law liens" where it could just say "all liens" and it refers to "all prior recorded and unrecorded liens" where it could just say "all prior liens." The use of the word "prior" in describing crop liens is not sufficient to support the negative inference that the Growers would have us draw from the word's absence in the description of the refined sugar liens. The Growers' textual argument effectively requires the addition of the

word "subsequent" to the description of the CCC's liens' superiority over refined sugar liens, so that the CCC's liens would be superior only to "all [subsequent] statutory and common law liens on . . . refined beet sugar in favor of the producers of . . . sugar beets." But the statute does not contain the word "subsequent," and we decline to add it.

The Growers also argue that the CCC's super-priority lien works a hardship on them and thus conflicts with the CCC's statutory mandate to stabilize, support and protect farm income. See 15 U.S.C. § 714. They also argue that when Congress suspended the CCC's direct price support authority for producers, 7 U.S.C. § 7301(b)(1) (suspending 7 U.S.C. § 1421 until 2002), they were left with little protection. But Congress is free to adjust this statutory scheme so as to provide greater protection to the CCC, which in turn benefits growers and processors alike because without CCC support, there is the risk that processing will cease and result in a total loss of crops. The Growers must turn to Congress to address their concerns, not the courts, as Congress is the body responsible for establishing this statutory scheme.

The Growers further argue that the CCC's own contracts and regulations suggest that the CCC does not have a super-priority lien on the refined sugar. The

Growers point to the "Notification of CCC's Security Interest," which states that where the CCC fails to obtain a lien waiver "from a superior lienholder," it will be subject to that lien "if . . . the lien is established to be legally superior to CCC's interest." The Growers also focus on 7 C.F.R. § 1435.105(b) (2000), which states,

> If there are any liens or encumbrances on sugar pledged as collateral for a loan, the processor must obtain waivers that fully protect CCC's interest even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

7 C.F.R. § 1435.105(b) (2000). Contrary to the Growers' argument, however, the Notification and the regulation do not imply that the CCC does not have a super-priority lien. Rather, the Notification is expressly limited to situations where the CCC is determined to have an inferior interest. By its statement, the CCC is merely protecting other lienholders should a court determine that the CCC's lien is somehow inferior to that of another lienholder. But there is no basis for holding that the CCC's liens in the present case are inferior. As for the regulation, it simply reduces the risk that the CCC will have to defend against claims from other lienholders. It also makes the collateral taken by the CCC more marketable by reducing encumbrances.

The Growers next argue that interpreting 7 U.S.C. § 7284(d) against their favor will present the risk of a Fifth Amendment taking, and that we should therefore adhere to their interpretation. This argument is devoid of merit. The Growers fail to show that there is a complete taking of their property that might pose a takings problem under Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). The Growers' liens were not extinguished; they merely became inferior to the CCC's liens. The Growers also fail to show that there has been a substantial frustration of their reasonable investment backed expectations that might risk a takings problem under Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978). In fact, the CCC's ability to obtain a super-priority lien places it in a better position to bail out processors, which in turn will become better able to pay producers.

The parties disagree as to the helpfulness of two out-of-circuit cases in resolving the present dispute: the Federal Circuit's decision in Montana v. United States, 124 F.3d 1269 (Fed. Cir. 1997), and the Fifth's Circuit decision in United States v. Scottsbluff National Bank & Trust Co., 902 F.2d 351 (5th Cir. 1990). Neither case is on point. In Montana, the state's interest was acquired after the CCC's liens, not before them. 124 F.3d at 1271, 1275-76. As for Scottsbluff,

although it predated the statute at issue in this case, a nearly identical provision, 7 U.S.C. § 1425(b), was in effect. Nonetheless, the Scottsbluff case made no mention of the statute in its opinion and consequently sheds no light on the issues presented in this case.

Finally, the Growers argue that if we rely on the statute's plain language in recognizing super-priority liens in favor of the CCC in the refined sugar, then we must also adhere to the plain language and determine that there is no coverage for the proceeds from that sugar. They point out that 7 U.S.C. § 7284(d) does not refer to the proceeds of refined sugar. The Growers cite no authority, however, for the proposition that we are bound to use only one mode of exegesis while performing statutory interpretation. And, as the CCC correctly argues, reading the statute not to apply to the proceeds of the sugar would produce the absurd result of nullifying the value of the CCC's liens. By contrast, such a concern with an absurd result is not presented in the analysis of the superiority of the CCC's liens in the refined sugar.

2. Adequate Assurances Requirement

The Secretary of Agriculture is required to obtain adequate assurances from processors who receive CCC loans that they will pay certain amounts to producers.

7 U.S.C.A. § 7272(e)(2)(A) (formerly § 7272(e)(2)) (West Supp. 2003). The Growers contend that such assurances were not provided in the present case.

The language of the statute leaves the determination of adequacy to the Secretary. As the CCC points out, the regulations pertaining to CCC loans state that "[n]onrecourse loan recipients shall pay all eligible producers who have delivered or will deliver sugar beets or sugarcane to such processor for processing not less than the minimum payment levels CCC specifies." 7 C.F.R. § 1435.106(c) (2000). This being the case, the Growers' hardship is attributable to the PNSC's execution of a security interest in favor of the CCC, not the CCC's acceptance of that interest. At any rate, although we recognize the hardship suffered by the Growers, we note that if not for the CCC's loans to the PNSC, the PNSC may very well have been unable to process the Growers' crops, resulting in a complete loss of all remaining unprocessed crops.

The judgment of the district court is AFFIRMED.